A

AHMAD ZUBAIR HJ MURSHID

v.

PP

B

FEDERAL COURT, PUTRAJAYA
RAUS SHARIF PCA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
AHMAD MAAROP FCJ
ZAINUN ALI FCJ
C APANDI ALI FCJ
[CRIMINAL APPEAL NO: 05-241-10-2013(W)]
10 SEPTEMBER 2014

CRIMINAL PROCEDURE: *Jurisdiction of court - Federal Court - Whether High Court exercised original jurisdiction in determination of*
D *application by way of motion - Whether subject matter originated in Sessions Court - Whether Federal Court could hear appeal - Courts of Judicature Act 1964, s. 87*

JURISDICTION: *High Court - Doctrine of inherent jurisdiction -*
E *Exercise of - Application to quash charges for being defective in substance and form - High Court rejected application - Whether decision was on preliminary issues - Whether disposed of rights of parties - Whether decision appealable - Whether abuse of process of court - Courts of*
F *Judicature Act 1964, s. 3*

WORDS AND PHRASES: *'decision' - Courts of Judicature Act 1964, s. 3 - Meaning of - Whether preliminary issues appealable to higher courts - Whether 'decision' include judgment, order or ruling which does not finally dispose of rights of parties on matters in dispute*

G

The appellant was charged in the Sessions Court with two principal amended charges under s. 409 of the Penal Code and two alternative amended charges under s. 418 of the Penal Code. Before the commencement of the trial at the Sessions Court, the
H appellant applied before the High Court by way of notice of motion ('the motion') to strike out the charges preferred against him on the ground that the charges were defective in substance and form. The High Court dismissed the motion. Aggrieved, the appellant appealed to the Court of Appeal. Whilst the appeal was
I pending before the Court of Appeal, the appellant had made a similar application before the Sessions Court for the charges preferred against him to be struck out and for him to be given a discharge not amounting to acquittal. However, the application

was dismissed by the Sessions Court. The Court of Appeal, in dismissing the appeal, held that the High Court was correct in not exercising its inherent jurisdiction to set aside and quash the charges against the appellant. Hence, this appeal. The appellant, in support of his appeal, submitted that the motion was first considered by the High Court and in doing so, was in fact deciding the matter in its original jurisdiction and therefore the Federal Court had the jurisdiction to hear the appeal. In support of his contention the appellant referred to the case of *Karpal Singh & Anor v. PP* ('*Karpal Singh*') in which it was held, *inter alia*, that a Magistrate or a Sessions Court Judge in a summary trial has no power to acquit and discharge an accused person without hearing evidence from the prosecution. The issues for the court's determination herein were, *inter alia*: (i) whether the High Court, in deciding the motion, was exercising its original jurisdiction or appellate jurisdiction; and (ii) whether doctrine of inherent jurisdiction and inherent power can be exercised to strike out the charges and to have the appellant acquitted and discharged on the charges.

Held (striking out appeal)
Per Raus Sharif PCA delivering the judgment of the court:

(1) Section 87 of the Courts of Judicature Act 1964 ('CJA') clearly provides that in criminal cases, the Federal Court will only have jurisdiction to hear and determine any appeal from the decision of the Court of Appeal in its appellate jurisdiction in respect of matter decided in the High Court in its original jurisdiction. The trial court, in the present case, was the Sessions Court. The High Court, in hearing the motion, could not be said to be exercising its original jurisdiction because the subject matter of the motion was in relation to the charges that were preferred against the appellant in the Sessions Court. Without the charges in the Sessions Court, the appellant had no basis to file the motion before the High Court. (paras 11, 22 & 23)

(2) Both the High Court and the Court of Appeal held that the High Court has the inherent power to set aside and quash or stay the charges permanently against the appellant. However, the inherent powers of the court must be exercised in exceptional circumstances to prevent undue oppression and abuse of the process of the court. The issues raised by the appellant herein were preliminary issues *ie*, whether the charges

were defective in substance and form. The High Court dismissed the appellant's application to strike out the charges and to have him acquitted and discharged. The decision of the High Court was clearly on a preliminary issue which did not finally dispose of the rights of the parties and was thus, not appealable. (paras 25, 26 & 33)

(3) The appeal by the appellant to the Court of Appeal and later to the Federal Court on a preliminary issue was clearly an abuse of the court process. This was especially so when the appellant had concurrently made a similar application before the Sessions Court to have the charges preferred against him to be struck out which was, however, dismissed. (*Karpal Singh & Anor v. PP*, ovrd). (para 34)

(4) The preliminary issues, at the time when *Karpal Singh* was decided, were still appealable to the higher courts as they were deemed as 'decision' made by the court pursuant to s. 3 of the CJA. However, the new definition of the word 'decision' in the amended s. 3 of the CJA does not include a judgment, order or ruling which does not finally dispose of the rights of the parties on the matters in dispute. With the amendment, appeals filed based on technical rulings which are interlocutory in nature are now things of the past, incompetent to be laid before the appellate court as it is clearly precluded by law. (paras 35, 36 & 38)

(5) The orders of the High Court and Sessions Court in dismissing the appellant's application would connote that the matter should proceed to trial as the charges preferred against the appellant still stand. Clearly, the decision not to strike out the charges before the commencement of the trial did not amount to disposal of the rights of the parties. Since the order gave no final decision on the matters in dispute, it was not a 'decision' within the definition under s. 3 of the CJA and therefore was not appealable. (para 39)

Bahasa Malaysia *Translation Of Headnotes*

Perayu dituduh di Mahkamah Sesyen dengan dua pertuduhan utama terpinda di bawah s. 409 Kanun Keseksaan dan dua pertuduhan alternatif terpinda di bawah s. 418 Kanun Keseksaan. Sebelum perbicaraan bermula di Mahkamah Sesyen, perayu memohon kepada Mahkamah Tinggi melalui notis usul ('usul') untuk membatalkan pertuduhan-pertuduhan terhadapnya atas

alasan bahawa pertuduhan-pertuduhan tersebut cacat dari segi kandungan dan bentuk. Mahkamah Tinggi menolak usul tersebut. Terkilan, perayu merayu kepada Mahkamah Rayuan. Sementara pertuduhan tersebut menunggu perbicaraan di Mahkamah Rayuan, perayu membuat permohonan yang serupa di Mahkamah Sesyen agar pertuduhan-pertuduhan terhadapnya dibatalkan dan untuk dia diberikan pelepasan yang tidak terjumlah kepada pembebasan. Walau bagaimanapun, permohonan tersebut ditolak oleh Mahkamah Sesyen. Mahkamah Rayuan, dalam menolak rayuan, memutuskan bahawa Mahkamah Tinggi betul dalam tidak melaksanakan bidang kuasa sedia adanya untuk mengenepikan dan membatalkan pertuduhan-pertuduhan terhadap perayu. Dengan itu, rayuan ini. Perayu, sebagai menyokong rayuannya, menghujahkan bahawa usul tersebut pada asalnya dipertimbangkan oleh Mahkamah Tinggi dan dalam berbuat demikian sebenarnya memutuskan perkara tersebut dalam bidang kuasa asalnya dan dengan itu Mahkamah Persekutuan mempunyai bidang kuasa untuk membicarakan rayuan tersebut. Sebagai menyokong hujahannya, perayu merujuk kepada kes *Karpal Singh & Anor v. PP* ('*Karpal Singh*') di mana telah diputuskan, antara lain, bahawa Majistret atau Hakim Mahkamah Sesyen dalam perbicaraan terus, tidak mempunyai kuasa untuk membebaskan dan melepaskan tertuduh tanpa membicarakan keterangan daripada pihak pendakwaan. Isu-isu bagi pertimbangan mahkamah di sini adalah, antara lain: (i) sama ada Mahkamah Tinggi, dalam memutuskan usul, melaksanakan bidang kuasa asal atau bidang kuasa rayuan; dan (ii) sama ada doktrin bidang kuasa sedia ada atau kuasa sedia ada boleh dilaksanakan untuk membatalkan pertuduhan-pertuduhan dan melepaskan dan membebaskan perayu daripada pertuduhan-pertuduhan tersebut.

Diputuskan (membatalkan rayuan)

Oleh Raus Sharif PMR menyampaikan penghakiman mahkamah:

(1) Seksyen 87 Akta Mahkamah Kehakiman 1964 ('AMK') jelas memperuntukkan bahawa dalam kes-kes jenayah, Mahkamah Persekutuan hanya mempunyai bidang kuasa untuk mendengar dan memutuskan apa-apa rayuan daripada keputusan Mahkamah Rayuan dalam bidang kuasa rayuannya berkaitan dengan perkara yang diputuskan di Mahkamah Tinggi dalam bidang kuasa asalnya. Mahkamah perbicaraan, dalam kes ini, adalah Mahkamah Sesyen. Mahkamah Tinggi, dalam

membicarakan usul tersebut, tidak boleh dikatakan sebagai melaksanakan bidang kuasa asalnya kerana subjek perkara dalam usul adalah berkaitan dengan pertuduhan-pertuduhan yang dikenakan terhadap perayu di Mahkamah Sesyen. Tanpa pertuduhan-pertuduhan di Mahkamah Sesyen, perayu tiada asas untuk memfailkan usul di Mahkamah Tinggi.

(2) Kedua-dua Mahkamah Tinggi dan Mahkamah Rayuan telah memutuskan bahawa Mahkamah Tinggi mempunyai kuasa sedia ada untuk mengenepikan dan membatalkan atau menggantung pertuduhan-pertuduhan secara kekal terhadap perayu. Walau bagaimanapun, kuasa sedia ada mahkamah perlu dilaksanakan dalam hal keadaan yang khusus untuk mengelakkan penindasan dan penyalahgunaan proses mahkamah. Isu-isu yang dibangkitkan oleh perayu di sini adalah isu-isu awalan iaitu sama ada pertuduhan-pertuduhan tersebut adalah cacat dari segi kandungan dan bentuk. Mahkamah Tinggi menolak permohonan perayu untuk membatalkan pertuduhan-pertuduhan dan untuk dia dibebaskan dan dilepaskan. Keputusan Mahkamah Tinggi adalah jelas berdasarkan isu awalan yang tidak memutuskan hak pihak-pihak secara mutlak dan oleh itu, tidak boleh dirayu.

(3) Rayuan oleh perayu kepada Mahkamah Rayuan dan kemudian ke Mahkamah Persekutuan atas isu awalan adalah dengan jelasnya satu penyalahgunaan proses mahkamah. Lebih-lebih lagi apabila perayu telah secara serentak membuat permohonan yang serupa di Mahkamah Sesyen untuk membatalkan pertuduhan-pertuduhan yang dikenakan terhadapnya yang, walau bagaimanapun, telah ditolak (*Karpal Singh & Anor v. PP*, ditolak).

(4) Isu-isu awalan, semasa kes *Karpal Singh* diputuskan, masih boleh dirayu ke mahkamah atasan kerana ia dianggap sebagai 'keputusan' yang dibuat oleh mahkamah berikutan s. 3 AMK. Walau bagaimanapun, tafsiran baru bagi perkataan 'keputusan' dalam s. 3 AMK yang dipinda tidak termasuk penghakiman, perintah atau keputusan yang tidak memutuskan hak pihak-pihak secara mutlak dalam perkara-perkara yang dipertikaikan. Dengan pindaan tersebut, rayuan-rayuan yang difailkan berasaskan keputusan teknikal yang bersifat interlokutori adalah perkara lama, yang tidak kompeten untuk dikemukakan di mahkamah rayuan kerana ia jelas dihalang oleh undang-undang.

(5) Perintah-perintah Mahkamah Tinggi dan Mahkamah Sesyen yang telah menolak permohonan perayu akan bermaksud bahawa perkara tersebut perlu diteruskan dengan perbicaraan kerana pertuduhan-pertuduhan yang dikenakan terhadap perayu masih kekal. Jelas keputusan untuk tidak membatalkan pertuduhan-pertuduhan sebelum permulaan perbicaraan tidak bermaksud pemutusan hak pihak-pihak. Oleh sebab perintah tersebut tidak memberikan keputusan terakhir atas perkara yang dipertikaikan, ia bukanlah 'keputusan' dalam tafsiran di bawah s. 3 AMK dan dengan itu tidak boleh dirayu.

Case(s) referred to:

Arun Shankar Shukla v. State of UP [1999] Cr LJ 3964 ***(refd)***
Connelly v. Deputy Public Prosecutor [1964] 2 All ER 401 ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [2010] 9 CLJ 625 FC ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [2011] 2 CLJ 845 CA ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [1999] 1 CLJ 537 CA ***(refd)***
Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors And Another Appeal [2013] 4 CLJ 901 FC ***(refd)***
Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(ovrd)***
Metropolitan Bank Ltd & Anor v. Poolev [1881-1885] All ER Rep 949 ***(refd)***
Mills v. Cooper [1967] 2 All ER 100 ***(refd)***
Munawar Ahmad Anees v. PP [2010] 1 CLJ 802 FC ***(refd)***
PP v. Dato Seri Anwar Ibrahim [2014] 5 CLJ 805 FC ***(refd)***
PP v. Lee Tin Bau [1984] 1 LNS 56 HC ***(refd)***
Tan Sri Eric Chia Eng Hock v. PP (No 1) [2007] 1 CLJ 565 FC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 22, 50(1), 66, 87
Criminal Procedure Code, ss. 5, 153(2), 173, 376
Federal Constitution, art. 145(3)
Penal Code, ss. 409, 418

Criminal Procedure Code [Ind], s. 482

For the appellant - Mohd Yusof Zainal Abiden (Stanley Augustin, Devanandan Subramaniam & Lim Kon Keen with him); M/s Stanley Augustin & Co
For the prosecution - Anthony Kevin Morais (Muhammad Saifuddin with him); DPPs

[Editor's note: For the Court of Appeal judgment, please see Ahmad Zubair Hj Murshid v. PP [2014] 1 CLJ 697.]

Reported by S Barathi

JUDGMENT

Raus Sharif PCA:

Introduction

[1] This is an appeal against the decision of the Court of Appeal dated 18 July 2013 in dismissing the appellant's appeal against the decision of the High Court. The High Court had on 15 March 2013 dismissed the appellant's application *vide* notice of motion to set aside or strike out the charges against him and for him to be acquitted and discharged.

[2] On 24 March 2014 we unanimously struck out the appellant's appeal. We now give our reasons.

Facts

[3] The appellant was charged in the Sessions Court Kuala Lumpur with two principal amended charges under s. 409 of the Penal Code and two alternative amended charges under s. 418 of the same Code. The charges read as follows:

1st Amended Charge

Bahawa kamu di antara 17 November 2008 dan 4 Disember 2009, di Pejabat Sime Darby Bhd, Tingkat 21, Wisma Sime Darby, Jalan Raja Laut, 50350 Kuala Lumpur, di Wilayah Persekutuan Kuala Lumpur, sebagai seorang agen iaitu Presiden dan Ketua Pegawai Eksekutif Kumpulan Sime Darby Bhd, dan di dalam kapasiti tersebut, telah diamanahkan dengan penguasaan ke atas dana syarikat tersebut, iaitu untuk memperolehi Tanah Hak Adat Bumiputra (HAB) di bawah 'Sarawak Upstream Expansion Plan' (Sarawak Expansion Plan) untuk tanah di Sarawak dan telah memperoleh kelulusan bagi pihak Sime Darby Bhd daripada Kerajaan Negeri Sarawak bagi tanah HAB yang dimaksudkan terletak di 'Confluence of Btg. Rejang/Btg. Baleh, Kapit and the remaining eastern half of the Merurun/Meluan/Entabai, Julau', telah melakukan pecah amanah jenayah dengan curangnya menyebabkan Sime Darby Plantation Sdn Bhd, sebuah anak syarikat Sime Darby Bhd, untuk membuat bayaran bernilai RM16,816,217.00 untuk memperoleh Nature Ambiance Sdn Bhd melalui cek Maybank bernombor 457192 kerana perlu untuk memperolehi balik hak Sime Darby Bhd ke atas tanah HAB yang terletak di 'Confluence of Btg. Rejang/Btg. Baleh, Kapit and the remaining eastern half of the Merurun/Meluan/Entabai, Julau' yang telah sebaliknya dianugerahkan kepada Nature Ambience Sdn Bd

disebabkan kegagalan kamu sebagai Presiden dan Ketua Pegawai Eksekutif Kumpulan Sime Darby Bhd, untuk mengambil atau mengarahkan tindakan undang-undang untuk membetulkan penganugerahan hak ke atas tanah HAB tersebut kepada Sime Darby Bhd dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 409 Kanun Keseksaan.

2nd Amended Charge

Bahawa kamu di antara 17 November 2008 dan 28 November 2008, di Pejabat Sime Darby Bhd, Tingkat 21, Wisma Sime Darby, Jalan Raja Laut, 50350 Kuala Lumpur, di Wilayah Persekutuan Kuala Lumpur, sebagai seorang agen iaitu Presiden dan Ketua Pegawai Eksekutif Kumpulan Sime Darby Bhd, dan di dalam kapasiti tersebut, telah diamanahkan dengan penguasaan ke atas dana syarikat tersebut, iaitu untuk memperolehi Tanah Hak Adat Bumiputra (HAB) di bawah 'Sarawak Upstream Expansion Plan' (Sarawak Expansion Plan) untuk tanah di Sarawak dan telah memperoleh kelulusan bagi pihak Sime Darby Bhd daripada Kerajaan Negeri Sarawak bagi tanah HAB yang dimaksudkan terletak di 'KJD/Lower Julau, Sg Julau/Sg Pitoh/Sg Jiet dan part of Merurun/Meluan/Entabai, Sarikei', telah melakukan pecah amanah jenayah dengan curangnya menyebabkan Sime Darby Plantation Sdn Bhd, sebuah anak syarikat Sime Darby Bhd, untuk membuat bayaran bernilai RM85,023,047.20 untuk memperoleh Vertical Drive Sdn Bhd melalui cek Maybank bernombor 235381 kerana perlu untuk "memperolehi balik hak Sime Darby Bhd ke atas tanah HAB yang terletak di 'KJD/Lower Julau, Sg Julau/Sg Pitoh/ Sg Jiet dan part of Merurun/Meluan/Entabai, Sarikei' yang telah sebaliknya dianugerahkan kepada Vertical Drive Sdn Bhd disebabkan kegagalan kamu sebagai Presiden dan Ketua Pegawai Eksekutif Kumpulan Sime Darby Bhd, untuk mengambil atau mengarahkan tindakan undang-undang untuk membetulkan penganugerahan hak ke atas tanah HAB tersebut kepada Sime Darby Bhd dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 409 Kanun Keseksaan.

1st Alternative Charge

That you, on 28 November 2008, as the President and Chief Executive Officer of Sime Darby Bhd and responsible in that capacity for obtaining approval from the State Government of Sarawak for Native Customary Rights (NCR) land on behalf of Sime Darby Bhd in connection with the Sarawak Upstream Expansion Plan ("Sarawak Expansion Plan"), cheated the Board of Directors of Sime Darby Bhd, at 21st Floor, Wisma Sime Darby, Jalan Raja Laut, 50350 Kuala Lumpur in the Federal

Territory of Kuala Lumpur, by omitting to inform the said Board whose interest you were bound by legal contract to protect, that the NCR lands approved to Sime Darby Bhd for lands in the area of Sarikei had instead been awarded to Vertical Drive Sdn Bhd, and thereby with the knowledge that you are likely to cause wrongful loss to Sime Darby Bhd and acquired Vertical Drive Sdn Bhd to which the said NCR land were awarded, and that you thereby committed an offence punishable under section 418 of the Penal Code (Act 574).

2nd Alternative Charge

That you, on 4 December 2009, as the President and Chief Executive Officer of Sime Darby Bhd and responsible in that capacity for obtaining approval from the State Government of Sarawak for Native Customary Rights (NCR) land on behalf of Sime Darby Bhd in connection with the Sarawak Upstream Expansion Plan ("Sarawak Expansion Plan"), cheated the Board of Directors of Sime Darby Bhd, at 21st Floor, Wisma Sime Darby, Jalan Raja Laut, 50350 Kuala Lumpur in the Federal Territory of Kuala Lumpur, by omitting to inform the said Board whose interest you were bound by legal contract to protect, that the NCR lands approved to Sime Darby Bhd 'for lands in the area of Sarikei had instead been awarded to Nature Ambience Sdn Bhd, and thereby with the knowledge that you are likely to cause wrongful loss to Sime Darby Bhd and acquired Nature Ambience Sdn Bhd to which the said NCR land were awarded, and that you thereby committed an offence punishable under section 418 of the Penal Code (Act 574).

[4] Before the commencement of the trial at the Sessions Court, the appellant applied before the High Court on 2 January 2013 by way of notice of motion ('motion') to strike out the charges preferred against him on the ground that the charges were defective in substance and form. In doing so the appellant sought the following orders:

(a) the charges against him under s. 409 and s. 418 of the Penal Code in cases No: 62-563-07-2012 and 62-564-07-2012 be set aside and struck off;

(b) that he be acquitted and discharged from the charges; and

(c) the proceeding of the two cases in the Sessions Court be suspended and/or stayed pending the disposal of the application.

[5] The appellant raised the following grounds in support of his motion:

(a) the first amended charge does not comply with the proviso of s. 153(2) of the Criminal Procedure Code ('CPC') as it covers a period exceeding one year;

(b) the amended charge does not contain all the element of the offence under s. 409 of the Penal Code;

(c) the amended charges failed to set out specific element of the offence under s. 409 of the Penal Code; and

(d) the property that he had allegedly caused to be disposed of was not the property over which he was entrusted with dominion;

(e) his failure had nothing to do with the manner in which he was supposed to discharge the trust; and

(f) the transaction on the dates in the alternative charges did not involve him and was not the kind of transaction which occasioned his representation or participation for him to omit to inform anything to the board of directors of Sime Darby Bhd.

[6] On 15 March 2013 the High Court dismissed the motion. The learned judge whilst agreeing that he had the inherent powers to acquit and discharge the appellant from all the charges or to strike out/stay the charges, however declined to do so. He gave the following reasons:

(a) the inherent powers could not be invoked to override an express provision of the law. Article 145(3) of the Federal Constitution and s. 376 of the CPC which conferred sole prerogative powers to the Attorney General and Public Prosecutor to institute, conduct or discontinue any criminal proceedings. Whether or not the prosecution would succeed depends on the evidence it would offer. It was premature to argue that the prosecution would unlikely to succeed due to lack of certain evidence;

(b) there is no evidence that the Attorney General has acted *mala fide* against the appellant;

A (c) the charges labelled against the appellant can be amended at any time before judgment is pronounced; and

(d) there is another avenue available, that is, it is for the appellant to make representation to the Attorney General to reconsider withdrawing all the charges against him.

B

[7] Aggrieved with the decision of the High Court, the appellant appealed to the Court of Appeal. On 18 July 2013, the Court of Appeal dismissed the appeal. Azahar Mohamed JCA delivering the judgment of the Court in dealing with the inherent jurisdiction of the High Court to set aside and quash the charges held:

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> There can be no doubt that the High Court has the inherent jurisdiction to set aside and quash a charge which is oppressive and an abuse of the process of the court (see: *Connelly v. Director of Public Prosecutions* [1964] 2 All ER 401, *Director of Public Prosecutions v. Humphtys* [1976] 2 All ER 497, *Karpal Singh & Anor v. Public Prosecutor* [1991] 2 MLJ 544 and *Dato' Seri Anwar bin Ibrahim v. Public Prosecutor* [2010] 6 MLJ 533). The court will only exercise its inherent power when there is miscarriage of justice (see *Karpal Singh & Anor v. Public Prosecutor* and *Public Prosecutor v. lni Abong and other trials* [2008] 8 MLJ 106). The jurisdiction to stay proceedings on the basis of abuse of process is to be exercised with greatest caution; the fact that a prosecution is ill advised or unwise is no basis for its exercise (see Archbold 2007: Criminal Pleading, Evidence and Practice, p 358). A court has no general power to quash the charge and to decline to allow the trial to proceed where an indictment has been preferred in accordance with the law (see *Director of Public Prosecutions v. Humphrys*).

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[8] Based on the above general principles, Azahar Mohamed, JCA held that the High Court was right in not exercising its inherent jurisdiction to set aside and quash the charges against the appellant.

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[9] It is pertinent to note that at the time the appeal was pending before the Court of Appeal, the appellant had made a similar application before the Sessions Court for the charges preferred against him to be struck out and for him to be given a discharge not amounting to acquittal. On the 18 July 2013, Sessions Court Judge dismissed the appellant's application.

H

I

Findings Of This Court

[10] At the outset we raise the issue of jurisdiction of this Court to hear the appeal in light of s. 87 of the Courts of Judicature Act 1964 ('CJA') which reads:

> 87. Jurisdiction to hear and determine criminal appeals
>
> (1) The Federal Court shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court in its original jurisdiction subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal.
>
> (2) Notice of any appeal by the Public Prosecutor shall be signed by the Public Prosecutor, the Solicitor General or any officer authorized by the Public Prosecutor.
>
> (3) An appeal may lie on a question of fact or a question of law or on a question of mixed fact and law.

[11] Section 87 of the CJA clearly provides that in criminal cases the Federal Court will only have jurisdiction to hear and determine any appeal from the decision of the Court of Appeal in its appellate jurisdiction in respect of matter decided in the High Court in its original jurisdiction. Thus, when a criminal matter originated from the Sessions Court, the Court of Appeal stands as the final court or the apex court. No further appeal shall lie to the Federal Court. The appeal should stop at the Court of Appeal. (See *Munawar Ahmad Anees v. PP* [2010] 1 CLJ 802; *Tan Sri Eric Chia Eng Hock v. PP (No 1)* [2007] 1 CLJ 565; [2007] 2 MLJ 101).

[12] It was submitted by learned counsel for the appellant that since the motion was first considered by the High Court it could not therefore have exercised its appellate jurisdiction. According to him, the High Court in deciding the application was in fact deciding the matter in its original jurisdiction. Therefore, he contended that in deciding the motion the decision of the High Court on the said motion is appealable to the Court of Appeal and thereafter to this court. In support of his argument that this court had jurisdiction to hear this appeal learned counsel referred to us the case of *Karpal Singh & Anor v. PP* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183; [1991] 2 MLJ 544.

[13] In response, learned Deputy Public Prosecutor ('DPP') submitted otherwise. Basically, the contention of the DPP was that this case should stop at the Court of Appeal.

[14] Much emphasis was placed by learned counsel for the appellant on the case of *Karpal Singh & Anor v. PP (supra)* to support his argument that this court has the jurisdiction to hear this appeal. Thus, it is necessary for us to look at that case in more detail.

[15] What happened in that case was this. Mr Karpal Singh and Mr P Patto ('applicants') were charged in the Magistrate's Court with separate offences under the Police Act 1967. Mr Karpal Singh was charged with having participated in an assembly in a public place without a licence from the officer-in-charge of the police district while Mr P Patto was charged with convening the assembly without a licence. At the hearing, the applicants raised a preliminary objection contending that the proceedings against them amounted to an oppression and that the court had a general and inherent power to protect its process from abuse and to strike out the proceeding.

[16] The application was rejected by the Magistrate and subsequently by the High Court on an application for revision.

[17] By way of a reference under s. 66 of the CJA pursuant to leave granted to the applicants, the applicants referred the following question of law for the consideration by the then Supreme Court:

> Whether the court has a general inherent power to protect its process from abuse to safeguard an accused person from oppressing or prejudice by striking out frivolous proceedings.

[18] The then Supreme Court held that by virtue of s. 173 of CPC the Subordinate Courts has no power to strike out proceeding or acquit an accused person without hearing evidence for the prosecution, However, it was further held that if any party feels that the charge and consequent proceedings are illegal on the face of the record, his remedy is to take up appropriate proceedings before the High Court to quash the charge.

[19] Thus it was submitted by learned counsel for the appellant that it was on the above decision of the then Supreme Court that guided the appellant to file the application before the High Court of strike out the charges against the appellant.

[20] We have no issue with the pronouncement made by the then Supreme Court that a Magistrate or a Sessions Court Judge in a summary trial has no power to acquit and discharge an accused person without hearing evidence from the prosecution. However that is not the issue before us. The issue now is whether the High Court in deciding the motion was exercising its original jurisdiction or appellate jurisdiction. If the High Court was exercising its original jurisdiction, then learned counsel for the appellant was right in his argument that this Court has the jurisdiction to hear his appeal. However, if the High Court was hearing it in its appellate jurisdiction then his case, as submitted by the learned DPP, should end at the Court of Appeal.

[21] The powers and jurisdiction of the High Court are governed by the CJA. The criminal jurisdiction of the High Court is found in s 22 of the CJA which reads:

22. Criminal Jurisdiction

(1) The High Court shall have jurisdiction to try:

(a) all offences committed:

(i) within its local jurisdiction;

(ii) on the high seas on board any ship or on any aircraft registered in Malaysia;

(iii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

(iv) by any person on the high seas where the offence is piracy by the law of nations; and

(b) offences under Chapter VI of the Penal Code, and under any of the written laws specified in the Schedule to the Extra-territorial Offences Act, 1976, or offences under any other written law the commission of which is certified by the Attorney-General to affect the security of Malaysia committed, as the case may be:

(i) on the high seas on board any ship or on any aircraft registered in Malaysia;

A (ii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft; or

(iii) by any citizen or any permanent resident in any place without and beyond the limits of Malaysia.

B (2) The High Court may pass any sentence allowed by law.

[22] As stated earlier, learned counsel's contention was that the High Court in hearing the motion was in fact exercising its original jurisdiction and thus the decision of the Court of Appeal on the matter was appealable to the Federal Court. With respect, we C disagree. We are of the view that the High Court, in hearing the motion cannot be said to be exercising its original jurisdiction. This is because the subject matter of the motion was in relation to the charges that were preferred against the appellant in the Sessions Court. Without the charges in the Sessions Court, the appellant D has no basis to file the motion before the High Court. In short the application cannot stand on its own. In fact even the motion filed was premised on the criminal trial number of the Sessions Court.

E **[23]** It is our view that the High Court in the instant case was not the trial court. The trial court has to be the Sessions Court. No doubt the hearing of the motion was first exercised by the High Court, but the hearing before the High Court cannot be equated to that of a court of first instance. The High Court in F doing so was not exercising its original jurisdiction. In the present case as the jurisdiction to try the charges was entrusted to the Sessions Court, the High Court in hearing the motion cannot be said to be exercising its original jurisdiction.

G **[24]** The next issue is on the inherent power of the court to strike out charge or charges preferred by the Public Prosecutor on the application by an accused person. We have to come out strongly on this issue because it is our observation that lately there has been growing trend for accused to apply to the High Court H by way of a notice of motion to strike out a charge or charges preferred against them by the Public Prosecutor at the subordinate court relying on *Karpal Singh & Anor v. PP (supra)* as the authority. This has resulted in considerable delay in criminal prosecution before the subordinate courts. To illustrate this point I further we will take the present case as an example. The appellant was charged before the Sessions Court on 17 July 2012.

However because of the preliminary issues raised on the legality of the charges, as well as the appeal process, it took nearly two years for the full trial to proceed before the Sessions Court.

[25] In the present case both the High Court and the Court of Appeal held that the High Court has inherent power to set aside and quash or stay the charges permanently against the appellant. Historically the doctrine of inherent power which allowed the High Court to prevent an oppressive and *mala fide* prosecution, abuse of process and to do wrong in the administration of justice has its origin in the English common law. Such doctrine can be traced in the following cases:

(a) *Metropolitan Bank Ltd & Anor v. Poolev* [1881-1885] All ER Rep 949, where it was held:

> There is an inherent power in every court of justice to stay a manifestly vexatious suit and to prevent vexatious suit and so protect itself from an abuse of its procedure ...

(b) In *Connelly v. Deputy Public Prosecutor* [1964] 2 All ER 401 at p. 409, Lord Morris of Borth-Y-Gest said:

> There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.
>
> The power (which is inherent in a court's jurisdiction) to prevent abuses of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice.

(c) In *Mills v. Cooper* [1967] 2 All ER 100, at p. 104 Lord Parker CJ said:

> Every Court has undoubtedly a right in its discretion to decline to hear proceedings on the ground that they are oppressive and an abuse of the process of the court ...

[26] Although we accept the forgoing principles stated above as the correct statement of the law, we must caution ourselves that the inherent powers of the court must be exercised in exceptional circumstances to prevent undue oppression and abuse of the

process of the court. It should also be noted that the inherent jurisdiction of the court springs not from legislation but from the nature and constitution of the court as a dispenser of justice! (see: *Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors And Another Appeal* [2013] 4 CLJ 901; [2013] 4 MLJ 35). As such we may hasten to add that the inherent jurisdiction of the court is therefore not as wide as it seems to be. Much depends on the facts and circumstances and clearly the court cannot exercise its inherent jurisdiction in respect of any matter covered by specific provisions of the law or if its exercise would infringe any specific provisions of the law. In this aspect it is apposite that we refer to the decision of the Supreme Court of India in the case of *Arun Shankar Shukla v. State of UP* [1999] Cr LJ 3964. The Supreme Court in addressing the inherent powers of the High Court which is statutorily envisaged under s. 482 of the Indian Criminal Procedure Code observed that:

> It is true that under s. 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. *But the expression "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abused of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in s. 482 of the Code in cases where there is no express provisions empowering the High Court to achieve the said object. It is well neigh settled that inherent powers is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provisions of the Code.*
>
> (emphasis added)

[27] Closer to home the above English common law doctrine of inherent jurisdiction found its way and adopted by the Malaysian Courts in the landmark case of the then Supreme Court case of *Karpal Singh & Anor v. PP (supra)* which as stated earlier prompted the appellant in this case to file the motion before the High Court. The issue now is whether such doctrine of inherent jurisdiction and thus inherent power can be exercised to strike out the charges and to have the appellant acquitted and discharged on those charges.

[28] In this regard it is appropriate to recall the reminder by the Supreme Court in *Karpal Singh v. PP (supra)* of the constitutional consequences of relying on the English concept of common law (one of which is the concept of inherent jurisdiction of the courts). The Supreme Court cautioned that, unlike UK, the Malaysian Federal Constitution which is a written law, is specifically declared to be the supreme law of the land, and that the UK has no criminal procedure code as that enacted by our legislature. The court also considered the effect of s. 5 of the Criminal Procedure Code which provides for English law relating to criminal procedure to be applied when there does not exist any special provision on the matter either in the Code or any other existing circumstances. In his speech delivering the judgment of the court, Abdul Hamid Omar LP said at pp. 548-549:

> *Perhaps it is appropriate that we now pause to consider the constitutional consequences of relying on the English common law concept. Unlike UK, the Constitution of the Federation which is a written law is specifically declared to be the supreme law of the land. Also, it is to be noted that UK has no criminal procedure code as enacted by our legislature*. For our immediate purpose we wish to refer to art. 145(3) of the Constitution which states that the Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before Syariah Court etc. ... **The discretion vested in the Attorney General is unfettered and cannot be challenged and substituted by that of the court's**. The reasoning and logic behind such contention is well illustrated in the case of *PP v. Lee Tin Bau* [1985] 1 MLJ 388, *Long bin Samat & Ors v. PP* [1974] 2 MLJ 152, *PP v. Datuk Harun bin Haji Idris and Ors* [1976] 2 MLJ 116 and *Poh Cho Ching v. PP* [1982] 1 MLJ 86. In the circumstances, it is superfluous to reiterate the same points.
>
> Another relevant consideration is our Criminal Procedure Code and its relationship with present English common law. The Criminal Procedure Code (Amendments and Extension) Act 1976, which came into force on 9 January 1976 is applicable to the whole of Malaysia, amending and codifying the previous separate legislations. The Code, as its name suggests was intended to be an exhaustive pronouncement of the criminal procedure. Section 5 of the Code is indicative of the principles to be applied by local courts. *This section provides for English law relating to criminal procedure to be applied when there does not exist any special provision on the matter either in the Code or any other existing law. English law is applicable insofar as it does not 'conflict or be inconsistent with this Code and can be made auxiliary thereto'*. The pronouncement and effect of the Code leave no *lacuna* under normal circumstances.

A Section 173 of the Code stipulates the whole procedure in summary trials in the subordinate courts including Magistrate's Courts. The opening para. (a) provides that the court should ensure the proper framing of the charge, which must be explained to and understood by the accused before his plea is taken. The next para. (b) relates to convictions upon a plea of guilty. The para. (c) directs that when an accused claims trial, the court shall hear 'all such evidence' as may be produced in support of the prosecution.

In our considered view, the expression 'all such evidence' is not confined to evidence which is available to the prosecution but which could not be produced for unavoidable reason at a specific date of hearing forming part of the trial. The term 'all such evidence' is to be given a broad interpretation and should be produced at the continued hearing of the trial on the future occasion. Paragraph (d) guides the function of the court to issue summons. Paragraph (e) confirms the traditional right of the accused to cross-examine witnesses against him. The criterion for acquittal or conviction is stated in the next para. (f).

The following para. (g) is the crucial one for discussion in this case. The court may discharge the accused (not acquit) if the court considers the charge to be groundless. The Magistrate will have to record the reasons for his decision. If he discharges the accused, there is nothing to prevent the prosecution re-charging the accused. The reason for the discharge may be that the Magistrate finds he has no jurisdiction or the charge does not disclose any offence known to the Penal Code or other written law. The only circumstances under which an accused can be acquitted are those stated in para. (f) and when the prosecution offers no further evidence because it feels that the prosecution case has collapsed prematurely. *There is no provision in the Code for striking out proceedings or acquittal without hearing all evidence the prosecution has the capacity to offer, even though postponements are needed*. If any party feels that the charge and consequent proceedings are illegal on the face of record, which we feel is rare, his remedy is to take up appropriate proceedings before a High Court to quash the charge and the whole proceedings producing evidence to the satisfaction of the trial judge to adopt such a case. It is absurd and against common sense to believe that the legislature ever expected members of subordinate judiciary to exercise such vast powers, trespassing into the public prosecutor's area.

[29] The Supreme Court held that the English doctrine of inherent jurisdiction was hardly applicable in the subordinate courts but the High Court may invoke the doctrine of inherent power in

circumstances such as found to be existing in *PP v. Lee Tin Bau* [1984] 1 LNS 56; [1985] 1 MLJ 388. The court held that in matters like criminal law of a purely domestic nature, the court will only exercise its inherent power when there is miscarriage of justice. However the court said:

> The court must be careful that the decision is not in conflict with the intention of the legislature as indicated in statutory powers. The inherent power apparently cannot be invoked to override an express provision of law or when there is another remedy available. Where the legislature has provided a particular mode of action or has vested an authority with powers to act in a particular manner and has prescribed the conditions limiting the scope of such action, the court cannot act outside those powers and conditions.

[30] For this we have to examine the charges first. The first and second amended charges against the appellant is in relation to an offence of criminal breach of trust by an agent under s. 409 of the Penal Code. The charges disclosed that the appellant was charged in his capacity as President and Group Chief Executive of Sime Darby Bhd. The amended charges went on to specify that in such capacity, the appellant was entrusted with dominion over the funds of the company to acquire Natives Customary Rights ('NCR') land under Sarawak Upstream Expansion Plan. The charges then asserted that the appellant committed criminal breach of trust in dishonestly causing Sime Darby Plantation, a subsidiary of Sime Darby to make payments amounting to RM16,816,217 and RM85,023,047.20 respectively in having to acquire Nature Ambiance Sdn Bhd and Verticle Drive Sdn Bhd.

[31] It was submitted on behalf of the appellant that the amended criminal breach of trust charges were flawed, defective and tantamount to him being charged for an offence unknown to the Penal Code for the reasons that the charges did not specify the direction of law prescribing the manner in which the trust was to be discharged or any legal contract made touching on the discharge of the trust. It was also submitted that the amended charges against the appellant were groundless, *mala fide* and an abuse of court process on the following grounds. First, the appellant was entrusted with the funds of Sime Darby to obtain NCR lands but the eventual payments were made from Sime Darby Plantation in which the appellant had no connections with the dominions of funds. Secondly, the appellant was not responsible for the approval and eventual payments made by Sime

A Darby Plantation to purchase Verticle Drive Sdn Bhd and Nature Ambience Sdn Bhd. And thirdly, the acquisition of Verticle Drive Sdn Bhd and Nature Ambience Sdn Bhd were made pursuant to a resolution approved by the Board of Directors of Sime Darby on 11 September 2009.

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[32] With regard to the alternative charges, the complaint by the appellant was that the charges did not contain sufficient particulars which the prosecution intended to prove against the appellant. As indicated earlier the alternative charges were charges relating to an C offence of cheating under s. 418 of the Penal Code. The two charges asserted that the appellant had cheated the Board of Directors of Sime Darby Bhd by omitting to inform the said Board that the NCR lands approved to Sime Darby Bhd had instead been awarded to Verticle Drive Sdn Bhd and Nature Ambience D Sdn Bhd. The appellant alleged that the charges were defective as the Board of Directors of Sime Darby Sdn Bhd did not meet to discuss the acquisition of the two companies on the dates specified in both the alternative charges. It was therefore argued that there was no omission on the part of the appellant to inform the Board E of Directors of Sime Darby Bhd that NCR lands approved to Sime Darby Bhd had instead been awarded to Verticle Drive Sdn Bhd and Nature Ambience Sdn Bhd.

[33] It can be seen from the above that the issues raised by the F appellant were preliminary issues ie, basically whether the charges were defective in substance and form. The High Court as stated earlier dismissed the appellant's application to strike out the charges and to have him acquitted and discharged. Clearly the decision of the High Court was on a preliminary issue which did not finally dispose of the rights of the parties. It is thus not G appealable. (see: *Dato' Seri Anwar Ibrahim v. PP* [1999] 1 CLJ 537; [1999] 1 MLJ 321; *Dato' Seri Anwar Ibrahim v. PP* [2010] 9 CLJ 625; [2010] 6 MLJ 586; *Dato' Seri Anwar Ibrahim v. PP* [2011] 2 CLJ 845; *PP v. Dato Seri Anwar Ibrahim* [2014] 5 CLJ 805).

H

[34] We are of the view that the appeal by the appellant to the Court of Appeal and later to this court on a preliminary issue whether the charges against the appellant in the Sessions Court were defective in form and substance was clearly an abuse of the I court process. This is especially so when the appellant concurrently has made similar application before the Sessions Court to have the charges preferred against him to be struck out.

And that the application before the Sessions Court was dismissed. This has raised another issue of whether the appellant after making an application to strike out the charges before the Sessions Court can now, as he did, apply the same to the High Court relying on the case of *Karpal Singh & Anor v. PP (supra)* as the authority for such a proposition. It is our judgment that it cannot be done as *Karpal Singh & Anor v. PP (supra)* can no longer be the authority for such proposition.

[35] In this respect we wish to point out that at the time *Karpal Singh & Anor v. PP (supra)* was decided, preliminary issues were still appealable to the higher courts as they were deemed as "decision" made by the court. At that material time under s. 3 of the CJA the term decision was defined as follows:

> 'decision' means judgment, sentence or order.

[36] However the CJA was amended in year 1998. Section 50 of the CJA sets out the jurisdiction of the Court of Appeal to hear and determine criminal appeals as follows:

> 50. Jurisdiction to hear and determine criminal appeals
>
> (1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court:
>
> (a) in the exercise of its original jurisdiction; and
>
> (b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.
>
> (2) An appeal shall lie to the Court of Appeal, with the leave of the Court of Appeal, against any decision of the High Court in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by a Magistrate's Court but such appeal shall be confined to only questions of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.

And the term "decision" as employed in s. 50(1) of the JCA is defined in the amended s. 3 of the CJA in this manner:

A

3. In this Act, unless the context otherwise requires:

'decision' means judgment, sentence or order (*but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties*).

B

(emphasis added)

[37] The position on the newly amended s. 3 of the CJA has been clearly set out in the decision of this court in the case of *Dato Seri Anwar Ibrahim v. PP* [2010] 9 CLJ 625 at p. 636 where the court pointed out the underlying reasons for the amendment to the definition of "decision" in s. 3 of the CJA which came into effect on 31 July 1998 in the following manner:

C

[24] The underlying reason behind the amendment to the definition of "decision" in s. 3 of the CJA is to stop parties from stalling a trial before the trial court by filing appeal after appeal on rulings made by the trial court in the course of a trial. Apart from that, the definition of "decision" by itself is sufficiently clear and it is the court's duty to give effect to the same. Justice demands that cases should move without unnecessary interruption to their final conclusion. That is what the amendment seeks to achieve as evident from the explanatory statement to the Bill which reads:

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E

2. Clause 2 seeks to amend section 3 of Act 91.

F

At the moment, in the course of hearing a case, if the court decides on the admissibility of any evidence or document, the dissatisfied party may file an appeal. If such appeal is filed, the court has to stop the trial pending the decision of the appeal by the superior court. This cause a long delay in the completion of the hearing, especially when an appeal is filed against every ruling made by the trial court. The amendment is proposed in order to help expedite the hearing of cases in trial courts.

G

[25] Quite apart from the explanatory statement to the Bill the definition of "decision" by itself, to our mind, is sufficiently clear, and it is the duty of the court to give effect to the same. Justice demands that cases should move without unnecessary interruption to their final conclusion. That is what the amendment seeks to achieve. The right of a party who is aggrieved by a ruling, after all, is not being compromised, as the party can always raise the issue during the appeal, if any, to be filed after the trial process is brought to its conclusion.

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I

[38] From the above explanation given by this court in the case of *Dato Seri Anwar Ibrahim v. PP (supra)* it is obvious that Parliament is not oblivious to appeals which tend to stall proceedings and delay speedy disposal of cases. The new definition of the word decision in the amended s. 3 of the CJA which we have laid emphasis to in the preceding paragraph does not include a judgment, order or ruling which does not finally dispose of the rights of the parties on the matters in dispute. With the amended s. 3 of the CJA, appeals filed based on technical rulings which are interlocutory in nature are now things of the past. Such appeals are incompetent to be laid before the appellate court as it is clearly precluded by law.

[39] In this instant case the appellant had applied before the High Court to quash the charges and order an acquittal against him. The application was dismissed. The appellant had also applied before the Sessions Court for the charges to be quashed and prayed that a discharge not amounting to acquittal to be ordered against him. The application was also dismissed. The way we perceive it, the orders of the courts below would connote that the matter should proceed for trial as the charges preferred against the appellant still stand. Clearly the decision not to strike out the charges before the commencement of the trial as was done in this instant case does not amount to disposal of the rights of the parties. Since the order gives no final decision on the matters in dispute, it is not a "decision" within the definition under s. 3 of the CJA and therefore is not appealable.

[40] It was for the above reasons we are hold that this appeal is on a matter which is incompetent to be laid before this court and was therefore struck out.